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08/04/2008 03:27 PM

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cc jmtwilson@netzero.net, timek678@msn.com,
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bcc

Subject South Stonestreet - Rezoning

August 1, 2008

Mayor and Council
111 Maryland Ave.
Rockville, MD 20850

Routed To:

☒ Council

☐ City Clerk

☒ City Manager

☐ City Attorney

☐ Council Support Specialist

☒ Other Susan Swift

Jim Wasilak

Dean Mellande

Dear Mayor and Council:

It has come to the attention of the East Rockville Civic Association (ERCA) that the property located at 600 S. Stonestreet is to come before the mayor and council for rezoning as early as August 4, 2008. The South Stonestreet Mart (Janeta Store) is presently zoned commercial (C-1). It has been recommended by the city's planning commission to rezone the property to residential (R-60).

In our review of the Rockville Master Plan, East Rockville Neighborhood Plan, and Stonestreet Plan, we were unable to locate any mention of this property being rezoned to R-60. It concerns us greatly that this property was recommended for rezoning without the input from ERCA and the community at large.

We have just learned that the city is now recommending that the property be zoned mixed use. If this is true, members of ERCA and the community want to know what type of mixed use is the city's planning commission proposing. What could the present property become? We the community must have a voice in all proposed zoning changes.

Since the request for rezoning did not come from members of the East Rockville Civic Association or the community, I would like to request that the hearing for rezoning be postponed. Since the next ERCA meeting is not scheduled until August 12, 2008, we propose the rezoning vote be delayed until the last week in August. This will allow adequate time for ERCA members and the community to voice their opinions and concerns to the mayor and council.

Your attention to this matter is greatly appreciated. Please inform us of your decision as soon as possible.

Very respectfully,

Marilyn K. Al-Mansoor
President
East Rockville Civic Association

East Rockville Civic Association, 214 Baltimore Road, Rockville, Maryland 20850
Tel: 301-424-4405 or e-mail mkaq8@hotmail.com

College Gardens Civic Association

816 Fordham Street
Rockville, Maryland 20850
www.collegegardens.org

Summary of the March 26, 2008 Meeting Between CGCA Members and Combined Properties Concerning the Zoning of College Plaza

The meeting started shortly after 7pm.

Attending from College Gardens:
Mark Pierzchala (President of the CGCA)
Mike Phillips (Vice President of the CGCA)
Karen Carp
Jerry Callistein
Betty Spano
Barbara Marinelli
Paul O'Brien
Steve Van Grack

Routed To:

[X] Council
[] City Clerk
[X] City Manager

[] City Attorney
[] Council Support Specialist
[X] Other Susan Swift
Jim Waselak
Dean Mellar

Attending from Combined Properties
Erica Leatham (attorney for Combined Properties)
Kurt Meeske (Vice President for Combined Properties)
Katie Rothenberg (Director of East Coast Development for Combined Properties)

[Background: Combined Properties wanted College Plaza to be zoned MXCD, Mixed-Use Commercial District. The CGCA had sent a letter to RORZOR to have it zoned MXNC Mixed-Use Neighborhood Center. The purpose of this meeting was to try to resolve this difference, perhaps by defining a new zone as a derivative of an already proposed zone. Most of the College Gardens attendees were at a meeting in July 2007 between the CGCA and Combined Properties. At the March 4, 2008 CGCA general membership meeting, this group of CGCA members were authorized to represent the CGCA on the College Plaza zoning issue. The deadline for written comments to the Planning Commission was March 28, 2008.]

1. Mark Pierzchala opened with some brief remarks. He noted the diverse representation from College Gardens and stated that there were two main things that concerned him: (1) the possibility of large apartment blocks at College Plaza, and (2) the fact that a Mixed-Use Zone does not have to end up as a mixed-use development. For example, a mixed-use zone of residential, commercial, and office could end up being all of one use.
2. Erica Leatham gave a brief history of the RORZOR process to redefine the Rockville Zoning Ordinance, and explained that this is why we were here today.
3. Erica Leatham explained the difference between zoning and planning. According to Leatham,

| <i>President</i> | <i>Vice President</i> | <i>Secretary</i> | <i>Treasurer</i> |
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zoning determines what can be built on any of a group of sites while planning is more a site-specific tool. One of her themes throughout the evening is that the draft zoning ordinance tries to accomplish planning activities in the zoning ordinance.

4. Leatham specifically spoke to the multifamily issue Pierzchala had raised. She noted that the City is looking for multifamily units in all of its mixed-used zones and would be surprised if the City would agree not to have multifamily in each of these zones.

5. There was some technical back-and-forth between Leatham and Pierzchala.

6. Kurt Meeske explained the impact of non-conformity. He noted that the current draft zoning ordinance would make the whole of College Plaza non-conforming and that this would make it difficult if not impossible to lease to new tenants. He said that this could lead to a blight situation. Pierzchala noted how College Gardens had already supported Combined Properties on this issue and would continue to do so.

7. At the request of Pierzchala (made prior to the meeting) Leatham went through each of the possible zone definitions and noted how they do and do not fit the property. This included the proposed MXNC, MXCD, MXE (Mixed-Use Employment), and the Commercial zones.

MXNC:

- About half the stores would be non-conforming.
- The kinds of stores allowed would not encourage shopping from beyond the area (she noted that the Plaza was a regional destination).
- This zone is conceived of as a collection of small shops and that the parcel of 9 acres is too large for a collection of small shops.
- This zone requires commercial on all streets and this would go against the stated CGCA desire to have residential on Rutgers Avenue.

At about this point, the CGCA members withered the Combined Properties representatives with criticism of both the existing property and of its relationship with the neighborhood in years past. This was a spontaneous and heartfelt outburst that had the effect of letting Combined Properties know that they had to go a long way towards satisfying College Gardens residents. There were criticisms of aesthetics, traffic, trust, the current plaza was not a center that the neighborhood could be proud of, as well as other things.

MXE:

- Maximum allowed height would be 120 feet (current max is now 75 feet, and for the MXCD it would also be 75 feet).
- Allows light industrial uses, something the CGCA also said it did not want.

Commercial:

- This seems to be an odd kind of classification, and its purpose in the City is not obvious. It limits height to 30 feet which is not suited to the property.
- It has little in common with current commercial zones.

MXCD:

For this zone (the one Combined Properties wants) Leatham had a handout which was an edited text of Article 13 of the Draft Zoning Ordinance. In it Leatham had changed some use designations for the MXCD zone and some of the design standards and procedures for MXCD. Some of her suggested changes were to make it more attractive to College Gardens and others seemed to be to suit Combined Properties. The group went through this handout.

8. At this point, Pierzchala asked the three Combined Properties representatives to leave for a time so that the CGCA members could discuss the situation. After about 15 or 20 minutes of discussion, the CGCA asked the three to come back.

9. The decisions of the members of the CGCA were:

- a. The CGCA would have no position on the zoning of College Plaza at this time. This rescinded the CGCA state preference for an MXNC zone.
- b. The CGCA appreciated the meeting with Combined Properties.
- c. The CGCA members heard and understood the positions of Combined Properties.
- d. The CGCA reserves the right to take a position on the proper zone for College Plaza at a later time.
- e. The CGCA requests adequate notification of any redevelopment of College Plaza, well before such redevelopment is started.
- f. The CGCA supports Combined Properties position with respect to grandfathering of uses and buildings on College Plaza.
- g. The CGCA will seek to protect its interests through the thorough review process that is in the draft zoning ordinance.
- h. The major concerns stated by the CGCA in its March 4 meeting, or in the March 26 meeting would be pursued. These include.
 - o No towering buildings.
 - o The tallest buildings may not be on Rutgers and must be as far as possible away from Rutgers Avenue.
 - o Some residential is okay, but not high density residential.
 - o No industrial uses.
 - o The neighborhood is prepared to be flexible on retail uses.
 - o There should be adequate parking.
 - o There should be walkable neighborhood shopping, especially from Yale Village and Scarborough Square.
 - o Development on Rutgers Avenue should be residential.
 - o Lighting cannot affect the neighborhood adversely.
 - o There are some uses allowed in an MXCD zone, such as hotels or commercial paid parking, that would not be appropriate in that space.

10. The meeting adjourned about 9:30pm.

Notes:

1. Pierzchala sent 2 letters to the Planning Commission on March 28 summarizing the CGCA position as of the March 26 meeting.
2. It was obvious that the MXNC zone was not appropriate so there was no sense in trying to hang on to zone. It was felt that the zone for College Plaza would eventually be designated

MXCD because that was really the more appropriate zone.

3. The decision to take no position on the College Plaza zone was taken because some members did not want to be working with Combined Properties, for example, seen as supporting their ideas.

4. The meeting was conducted in a cordial, businesslike manner. All CGCA members contributed to the discussion and the decisions. They were all given the chance to review the resulting letter to the Planning Commission before it was sent.

5. The neighborhood will have to be vigilant on this issue in the coming years, but the stage has been set for fruitful cooperation between the two parties in years to come.

Mark Pierzchala

College Gardens Civic Association

816 Fordham Street
Rockville, Maryland 20850
www.collegegardens.org

College Gardens Civic Association
Final Summary of Neighborhood Concerns
March 28, 2008

To: Members of the Planning Commission and City Staff
Sent electronically.

This is a revision of testimony given January 30, 2008. At that time I noted that it was a draft subject to review by a full meeting of the College Gardens Civic Association. This update supersedes the previously written note of January 30, 2008.

On March 4, 2008, the College Gardens Civic Association met and discussed the January 30, 2008 written testimony. Each section was discussed in turn.

1. The eventual redevelopment of College Plaza (**changed from January 30, 2008**)

In the March 4, general membership meeting, the CGCA authorized a panel of neighbors to meet with Combined Properties, and to represent the CGCA on this issue. This meeting took place on March 26, 2008. The CGCA, through the action of this panel, **decided to take no position** with respect to the proper zone of College Plaza. A separate letter, also dated March 28, 2008, is sent to Ms. Robin Weiner, Chair of the Planning Commission, with the details of this decision. This rescinds the CGCA stated preference of the MXNC zone for this property. We do support Combined Properties in their position on the grandfathering of buildings and uses in College Plaza.

2. Accessory apartments (**the same as January 30, 2008**)

Our understanding from staff is that any accessory apartment in a R90 zone would be subject to a special exception process as is the case now. This suits College Gardens.

3. Definition of a family (**amended from January 30, with a stronger point of view**)

January 30: On a related note, we do not understand why the definition of the term *family* includes up to 5 unrelated adults living as a single dwelling unit. It is a definition with much potential for abuse.

March 4: Agrees with the January 30 statement and adds that the CGCA believes that the number of unrelated adults in the definition of a *family* should be no higher than the current zoning ordinance.

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4. Accessory structures (**the same as January 30, 2008**)

RORZOR allows an accessory structure in an R90 neighborhood to take up to 25% of the area of a back yard. This is far too large an area for any legitimate need. The impacts upon neighbors are both visual and water related. Our explicit proposals:

- Height of accessory structures should be measured to the peak, the same height definition as proposed for houses in these kinds of residential neighborhoods. The maximum allowed should be 15 ft. measured from the lowest point of the original grade.
 - The logic of measuring height by measuring the halfway point from the peak to the bottom of the gable is not understood by a layperson and seems arcane. Rockville should consider dispensing with this type of height measurement entirely.
 - College Gardens is built on hills and effectively consists of terraces from one property to another along some streets. Thus the altitude of one property is often 3 to 5 feet lower than an abutting property. This has the effect of adding to the apparent height of an accessory structure. To give an example, a 15 ft. accessory structure (as measured by the current definition) could be 20ft. at the peak. If an abutting property is 5 ft. lower than that of the accessory structure, then the structure appears to be 25 ft. tall from the lower property. There is no legitimacy to these looming structures. They detract from the enjoyment of the use of neighboring yards.
- For every foot over 10 feet tall, the accessory structure should be set back 2 ft. further from the property line.
- Any proposed new accessory structure over 300 sq. ft. should have to go through a special exception process. The largest area for an accessory structure should be 15% of the area of the backyard in a R90 zone.
 - Extensions to houses seem to be more severely restricted than accessory structures and we don't see why this should be the case.
- An assessment of stormwater impacts as well as water runoff onto other properties should be made for any new structure over 300 sq. ft. The new zoning ordinance should be explicitly coordinated with stormwater management policies of the City as well as with other water runoff policies. All efforts should be made to limit the construction of further impervious area.
- Current accessory structures should be grandfathered as conforming. Nonconformities create too many problems.

5. Home-based Businesses (**the same as January 30, 2008**)

There are several home-based businesses in College Gardens and the proposed RORZOR Home Based Business regulations seem far too onerous and unnecessary. For minor businesses, it should not be necessary to pay a fee or to keep a log of visitors, or even to register. If there is a question of whether a business is a major Home-Based Business, a log can be required at that time. In fact a no-impact Home Based Business definition should be defined. The example of a piano teacher having to register in order to give lessons seems particularly striking.

6. Political Signs (**added at the March 4, 2008 meeting**)

Political signs should not be allowed to be displayed until 30 days before the election. This represents a return to previous practice.

Notes:

1. Commissioner Tyner asked whether I had looked at the MXE designation. I had not, but upon subsequent inspection, it suffers from the same problem as the other mixed use zones, that is, it allows multi-family dwellings. (**See number 1. above.**)

2. Commissioner Tyner asked whether the preference for a mixed use zone without multi-family would replace the CGCA letter requesting the MXNC designation. I said that the MXNC designation seems to be the best choice of the current mixed-used designations. If a lower density mixed-use designation is offered we would probably choose it. (**See number 1. above.**)

3. Commissioner Hill asked how it could be required that all uses of a mixed-use zone be developed. I answered that you could set a minimum percent of a Floor Area Ratio (FAR) for each use (as was discussed at a recent work session of the Planning Commission). For example, for a mixed use zone that allows offices, residential, and commercial uses, you could require that at least 10% of the overall FAR be implemented for each use. (I didn't say at the hearing, but thought subsequently, that in order to maintain flexibility; a minimum FAR for a particular use could be reduced or eliminated under a conditional or special exception process in consultation with the nearby neighborhood association.) (**Still holds.**)

4. On January 31, 2008, residents of the Twinbrook area brought to our attention the switching of a term in the RORZOR draft (25.08.05 from "footprint" to "floor area". Having reread the offending section, I agree that this switch in terminology unduly restricts the flexibility in remodeling single-family residences and that the term should be switched back to "footprint". (**Some Commissioners have stated that the Twinbrook reading of this wording was mistaken. I have not re-evaluated this text since then, but emphasize that we support whichever gives greater flexibility.**)

Resubmitted to Katie Mencarini, Planner I, Dept. of Community Planning and Development Services, City of Rockville, March 28, 2008.

Mark Pierzchala
President, College Gardens Civic Association

College Gardens Civic Association

816 Fordham Street
Rockville, Maryland 20850
www.collegegardens.org

March 28, 2008

Robin Wiener, Chair: Rockville Planning Commission
RE: New Mixed-Use Zone Proposal
Sent electronically.

Dear Ms Wiener,

On March 5, I sent you a letter informing you of a decision by the College Gardens Civic Association (CGCA) to meet with Combined Properties with respect to the proper zone for College Plaza. A panel of CGCA members met with representatives of Combined Properties on March 26, 2008. This letter informs you of the decisions taken by the CGCA through this panel. This panel was authorized to represent the CGCA with respect to College Plaza zoning at a general membership meeting on March 4, 2008.

- The panel informs you that it met with Combined Properties concerning the proper zone for College Plaza. We had a good discussion of all pertinent issues. The CGCA panel effectively communicated the neighborhood's concerns to Combined Properties.
- The panel heard and understood the representations made by Combined Properties and appreciates the fact that they came to this meeting well prepared.
- The panel decided that the CGCA would not take a position at this time with respect to the proper zone for College Plaza. This decision rescinds a letter I wrote on July 22, 2007 to RORZOR through Art Chambers expressing a preference for the MXNC zone.
- The CGCA reserves the right to take a position on the proper zone for College Plaza at a later time.
- The CGCA supports Combined Properties in its request to grandfather all current uses and buildings in College Plaza.
- The CGCA insists on receiving adequate notice of any redevelopment of College Plaza well before any application is made for redevelopment to the City.

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• The CGCA will rely on the thorough review and approval process proposed in the RORZOR draft to protect its interests as officially enunciated in our March 4, 2008 general membership meeting, or by the CGCA panel at the March 26, 2008 meeting. These include:

- No towering buildings.
- The tallest buildings may not be on Rutgers and must be as far as possible away from Rutgers Avenue.
- Some residential is okay, but not high density residential.
- No industrial uses.
- The neighborhood is prepared to be flexible on retail uses.
- There should be adequate parking.
- There should be walkable neighborhood shopping, especially from Yale Village and Scarborough Square.
- Development on Rutgers Avenue should be residential.
- Lighting cannot affect the neighborhood adversely.
- There are some uses allowed in an MXCD zone, such as hotels or commercial paid parking, that would not be appropriate in that space.

Your Sincerely,

Mark Pierzchala,
President, College Gardens Civic Association

College Gardens Civic Association

816 Fordham Street
Rockville, Maryland 20850
www.collegegardens.org

College Gardens Civic Association
Addendum to the Final Summary of Neighborhood Concerns
March 28, 2008

To: Members of the Planning Commission and City Staff
Sent electronically.

This is an addendum to the Final Summary of Neighborhood Concerns sent earlier today by myself on behalf of the College Gardens Civic Association. This concerns item 2 of that earlier document on accessory apartments. It has come to my attention just today of a situation in College Gardens where we have a de-facto accessory apartment that skirts the intent of current and future definitions and procedures concerning accessory apartments.

Earlier today I sent in part:

2. Accessory apartments (**the same as January 30, 2008**)

Our understanding from staff is that any accessory apartment in a R90 zone would be subject to a special exception process as is the case now. This suits College Gardens.

This is now amended as follows:

2. Accessory apartments (**changed from January 30, 2008**)

Our understanding from staff is that any accessory apartment in a R90 zone would be subject to a special exception process as is the case now. There should still be a special exceptions process, but it should not be subject to subversion of intent by lax definition of terms that make up the definition of an accessory apartment.

The proposed definition of an *accessory apartment* in the RORZOR draft is:

Accessory apartment: A second dwelling unit that is:

1. Part of and subordinate to an existing single unit detached dwelling, and
2. Contains cooking, eating, sanitation and sleeping facilities.

The following should be added: "Further, if there is either a separate entrance or mailbox for the second dwelling unit, this second unit is considered to be an *accessory apartment*."

There is a house in College Gardens where there is an accessory apartment in all ways except that the term *cooking facility* has been narrowly defined to be a stove. Therefore, a microwave, a

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toaster, and other small devices do not count as cooking facilities. This allows a gaping loophole in the definition of an accessory apartment. The second dwelling unit in the house in College Gardens contains a microwave and a toaster. It also has a separate entrance, a separate mailbox, and a car parked out front. The impacts on the neighborhood are the same regardless whether the cooking facility is a stove or a microwave and toaster. The property once applied to the Board of Appeals for permission to have an accessory apartment, but withdrew the application in the face of neighborhood opposition. We were told that the stove was removed (it was) and that the person staying in the second dwelling unit was a boarder. It was not until today that I learned (from City Staff) that there were other cooking devices in the second dwelling unit.

Therefore the term *cooking facility* should be explicitly defined and include any device that heats or cooks any kind of food. Further, any kind of refrigerator present in the second dwelling unit should also mark it as an accessory apartment.

I was also told today that even if the cooking facilities were removed, the person or persons would be considered boarders. But boarding includes the provision of meals, and if that is not truly the case, then this situation should not be considered a boarding situation either.

I see that the RORZOR draft does not allow boarders or roomers in an R90 zone, and this omission does suit College Gardens.

The College Gardens neighborhood has always taken a strong stand against accessory apartments because we bought into a neighborhood of single-family homes and we want the community to stay that way. The fact that College Gardens abuts Montgomery College makes the neighborhood attractive to boarding and accessory apartment arrangements, and this could destroy the character of our community.

Yours truly,

Mark Pierzchala
President, College Gardens Civic Association



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08/04/2008 04:02 PM

To mayorcouncil@rockvillemd.gov
cc
bcc
Subject Re: Proposed Zoning Changes

Routed To:

☒ Council

☐ City Clerk

☒ City Manager

☐ City Attorney

☐ Council Support Specialist

☒ Other Susan Swift

Jim Wasilak
Dean Mell

As an East Rockville Resident, I see first hand issues of mansionization and poorly conceived construction projects. ROZOAR and many other groups worked diligently to put together building height limits that in effect help neighborhoods retain their identities. I am tired of Rockville trying to look like other areas -- Bethesda has a demonstrated history of managing its residential areas by design review, which has proved inadequate and exacerbated the issues and impact on surrounding residences. Please retain the 32-35' restriction in roof height. There is nowhere else I saw in the proposed zoning that gives the City any control over mansionization. It is disheartening to have resources wasted on buildings that drive up costs in the community for existing residents, and directly impacts their quality of life. We live next door to a city mistake that happened before we owned the property and have had to deal with storm water roof run-off as a result; it gets expensive. Living next door to such large buildings, facing a bank of wall outside ones windows, and lack of sufficient setback and green space affect people subconsciously. Where is the sunlight, the negative space to rest ones eyes, the ecosystems that support our floundering bird and butterfly populations - among so many flora and fauna affected by our encroachment. We have been fairly fortunate on our block as three large homes have been built with some sensitivity. There are others in the immediate neighborhood that have not. Some even lack sufficient parking in front of their property to support the number of bedrooms.

Also, I have noticed greenery growing in storm water drains in various locations across the city. The drains were even packed with sand and soil in front of the Red Brick Courthouse after pavement was worked on by contractors. Aren't these violations for which the city is liable? There has been so much talk of storm water management and from what I've seen, the city is not exercising due diligence on this matter. Please forward these comments to the appropriate entities.

Thank you for permitting my citizen concerns on these matters. Rockville is a wonderful place to live and I'd like to see it develop its own character and identity - not become a clone of Silver Spring, Bethesda, or Kentlands.

Maizie Roche
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Exhibit No. 80
Zoning Ordinance Rewrite
PH Dates: 6/16 & 6/30/08

Routed To:

☒ Council
☐ City Clerk
☒ City Manager

☐ City Attorney
☐ Council Support Specialist
☒ Other

Susan Swift
Jim Waslak, *Deann Mellanc*

MEYERS | EISLER | LEATHAM LLC
Attorneys At Law

August 4, 2008

Erica A. Leatham
eleatham@starkmeyers.com
direct: 240-283-1163

VIA ELECTRONIC MAIL

Mayor and Council of the City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: Comprehensive Review of the City of Rockville Zoning Ordinance

Dear Mayor Hoffmann and Councilmembers:

On behalf of Combined Properties, the owner of College Plaza, we offer the following additional comments to the draft Zoning Ordinance for the Mayor and Council's consideration. Combined Properties sent a letter to the City, dated July 9, 2008 (marked as Exhibit 38) summarizing many of these issues. This correspondence is intended elaborate on the matters raised in that letter and in Combined's testimony at the public hearing, as well as raise additional areas of concern that could not be described fully in the time allotted for oral testimony.

Combined Properties' concerns primarily center on the characteristics of the zone being proposed for College Plaza. However, there are a number of other matters that also deserve attention. In summary, Combined proposes the following amendments to the draft Zoning Ordinance as recommended by the Planning Commission:

1. Change recommended zoning for College Plaza to MXCD to be consistent with the current zone and surrounding land uses.
2. Revise Section 25.13.05(d) (grandfathering) to include uses, as well as structures, and incorporate additional existing structures.
3. Streamline the Site Plan Approval Process.
4. Modify development standards for the mixed use development zones (public use space, parking and various design standards – see page 541 of the Record before the Planning Commission).

Combined Properties has a long history in this area: Combined is the original owner and developer of College Plaza and has numerous other long-term holdings throughout Montgomery County and the Washington Metropolitan area. Combined also has a large presence in Southern California where the mixed use redevelopment of shopping centers

similar to College Plaza is underway. Consequently, Combined has extensive experience in the management, development and redevelopment of properties like College Plaza and has spent considerable time contemplating when and how this shopping center could redevelop. While redevelopment in the short term is unlikely, Combined is focused on the future for redevelopment and the present for operational viability. Therefore, the two most important elements of the Zoning Ordinance revision are (1) the proposed zone and (2) the current grandfathering language.

Background

College Plaza has substantial frontage along MD 355 (Frederick Avenue) and is mapped within the C-2 zone. An office park and apartments surround the shopping center: the West Gude office park sits to the north (recommended for the MXE Zone), a radio tower lies to the south (outside the boundaries of the City) and; to the west, is Rutgers Street and the Yale Village apartment community (recommended for the RMD 15 Zone) which buffers the shopping center from the single family College Gardens community. To the east, across MD 355 is commercially zoned and utilized property under Montgomery County's jurisdiction.

The 110,000 square foot shopping center dates to the mid-1970s and has recently received façade improvements to update the look of the buildings. College Plaza includes a grocery store (Magruder's) and two other large anchors, including a home improvement store (The Tile Shop) and an automotive store, as well as a drive-through restaurant in a stand-alone building fronting MD 355.

MXCD Zone

The draft zoning map proposes the Mixed Use Neighborhood Center (MXNC) zone for College Plaza. **Combined requests the Mavor and Council change the proposed zoning to the Mixed Use Corridor District (MXCD) zone to be consistent with the surrounding land uses and the existing zoning.**

Planning Staff has indicated verbally and in various Staff Reports that the proposed zoning map is intended to replace the existing single use zones with "equivalent" mixed use zones established by the new Zoning Ordinance. (See page 11 of the Staff Report dated January 11, 2008 to the Planning Commission: "... the committee attempted to apply the revised zoning in a manner generally consistent with the purpose and intent of the current zones ...")

A comparison of the various existing commercial zones in the City and the proposed mixed use zones, reveals that the C-2 Zone is equivalent to the MXCD Zone, not the MXNC Zone proposed for College Plaza:

The purpose of the C-2 Zone is to provide a wide range of retail uses and services and commercial activities proximate to certain arterial highways providing access to the City and to provide office space In order to protect the abutting or surrounding residential zones, the regulations for this zone establish standards retaining such medium density of use and concentration of vehicles as is compatible with the function of the zone. (Section 25-272(c); emphasis added.)

The MXCD zone is "intended for areas along the major highway corridors outside of the MXTD zone areas," and allows for "medium density development of retail, office and residential uses" (Section 25.13.02.), similar to the C-2 Zone.

Conversely, the MXNC Zone

is intended for sites that are either currently developed or recommended for development primarily for local retail and service uses in areas either within or in close proximity to single unit detached residential uses. This zone allows for low to moderate density development of retail, service, office and residential uses. . . . office uses are limited. (Section 25.13.02; emphasis added)¹

College Plaza, though proposed to be mapped in the MXNC Zone is not in close proximity to single family residential uses, nor is low density retail and employment uses appropriate for a property with over 400 feet of frontage on a major arterial roadway.

In addition to the purpose clauses, a comparison of the use tables and development standards for the C-2 zone and MXNC zone reveals significant disparities. The same comparison of the C-2 and MXCD zones reveals an equally remarkable similarity.

The MXCD zone is applied to C-2 zoned properties throughout the Rockville Pike corridor to the north and the south of College Plaza (with the exception of the areas around the Metro station) and there is no reason to treat College Plaza any differently than these other properties. Specifically, properties located along Rockville Pike south of College Plaza (separated only by the entrance to Montgomery College), currently zoned C-2, are recommended for the MXCD Zone, as are several properties to the north of College Plaza beyond the Gude office park.

Testimony from Combined Properties drew comparisons between College Plaza and Woodley Gardens and College Plaza and Congressional Plaza. The similarities between College and Congressional Plazas are obvious, while the only similarity between College Plaza and Woodley Gardens is the proposed zone. Placing College Plaza in the MXNC Zone effectively changes the land use of the property, which can only be accomplished via a master plan process.

Finally, Combined Properties understands and is sensitive to the needs of the College Gardens Citizens Association, as a neighboring, but, not adjacent, property owner. As a result, Combined and the College Gardens leadership have met several times over the continued operation of the shopping center and the potential redevelopment. College Gardens has testified with respect to its position on the proposed zone for College Plaza, and has withdrawn its support for the MXNC zone.

Non-Conformities and Grandfathering

Combined supports the Planning Commission's inclusion of a grandfather clause in the Zoning Ordinance: should the MXNC zone be applied to College Plaza, most of the structures and at least a third of the uses will become non-conforming. The grandfather

¹ This is nearly identical to the purpose clause of the C-1 Zone.

language of Section 25.13.05.d acts to protect the legality of existing structures. However, it does not apply to uses, nor would it grandfather any structures legally existing under a previous zoning approval.

Because the MXNC zone will create a significant number of non-conforming uses at College Plaza, without grandfather protection for these uses, and all uses currently allowed under the existing C-2 zone, the shopping center will have difficulties re-leasing space and meeting its obligations to current tenants within the parameters currently provided. Moreover, the five percent limitation on physical changes to the property is so small as to be insignificant and will prevent any significant enhancement of the property during the time before complete redevelopment.

We, therefore, propose the following language:

25.13.05.d Existing Structures or Development – Structures or developments in existence which conform to previously approved development approvals and any structure or development in existence as of [effective date] that conforms to the development standards and requirements of the zone in effect immediately prior to (date of adoption) is considered to be conforming. . . . Any extensions or additions to the existing structure or development that exceed [five percent (5%)] ten percent (10%) of the pre-existing gross floor area must comply with all the development standards and requirements of the zone in which the property is located. . . .

25.13.05.e Uses – Any uses permitted by right or by Special Exception under the zone immediately in effect prior to [effective date] may be continued or initiated, as appropriate, subject to the provisions of Article 15, if applicable, and shall be considered conforming uses.

Additionally, although language in Section 25.08.05.b.1.c allows space to sit vacant for a period of time while it is actively being leased without termination of its non-conforming use status, the year-long grace period to backfill vacant space does not reflect the realities of retail lease negotiations. A lease negotiation itself can often last nine to 16 months (or more); upon culmination of the lease, design and improvements will often take another six to nine months and “standard” building permits another six months. Even when this process begins before the prior tenant moves out, there may be a lengthy period of time in which the space is vacant even where a tenant is on the horizon. Adding to the lengthy process is the new requirement for a Nonconforming Alteration Approval during which no activity will be occurring in the space. We, therefore, request that Section 25.08.05.b.2 be modified to extend 12 months to 24 months.

With respect to bringing in new tenants, Section 25.08.06(a)(d) requires Chief of Planning Nonconforming Alteration Approval in certain instances. Previously, such approval was required for “interior remodeling that does not increase the nonconforming area,” but this was since deleted, presumably because the Planning Commission concluded that interior construction had no impact on the status of the building and the use thereof. To avoid future confusion over whether such activity is permitted “by right” or not permitted at all, we request that such work be explicitly permitted without requiring approval:

25.08.07.3 Not Required – Nonconforming Alteration Approval is not required for substitution of a nonconforming use with another nonconforming use and/or interior remodeling that does not increase the nonconforming area.

The standards governing issuance of the Planning Commission's Non-Conforming Alteration approval do not recognize the reality that the Zoning Ordinance is creating non-conformities on nearly every property being rezoned. As a result, the standards must be relaxed to allow property owners to have some assurance that they will be able to re-lease/backfill space that has been devoted to a non-conforming use and would be extremely expensive to convert to a conforming use.

Proposed Mixed Use Zoning Standards

The Planning Commission and the Mayor and Council have received a number of comments with respect to the development and design standards in the mixed use zones. As a result of these comments, the Planning Commission "relaxed" certain design standards. Combined supports this effort and concurs with comments from other developers and property owners on this issue. However, as described during testimony by others, there remain several issues that need to be addressed: the amount of public use space, parking standards and outdoor sales areas.

As a result of Combined's continued conversations with the College Gardens community representatives, Combined developed a modified zone that took much of the design framework that has troubled the Mayor and Council in recent worksessions out of the Zoning Ordinance (and to be incorporated in a separate, more flexible document). The rationale and the proposed modifications can be found at page 541 of the record of the Planning Commission. In lieu of adopting that proposed language, several other matters deserve individual attention:

1. Height – Heights in the mixed use zones are still layered from the street line to the bulk of the site. When looking at the future development of College Plaza under the MXCD Zone, Combined envisions the massing of the new development toward MD 355 – lower buildings along Rutgers, growing taller, to the maximum permitted by the zone, as the buildings approach Frederick Avenue. However, Section 25.13.05.b.2.b does not allow buildings taller than 50 feet at the street line. Such a limitation effectively restricts Combined's ability to achieve a realistic development pattern while respecting the concerns of the community. The inflexibility of this language will serve to preclude other good trademarks of good design. Consequently, the language setting standards for minimum and maximum building heights at the street line should be eliminated. The matters are best left to be addressed in the relevant Master Plan.
2. Public Use Space – the public use space requirements are excessive, particularly when coupled with other on-site engineering requirements (forestry, stormwater management, etc.) Open area and public space is an integral element to any redevelopment, particularly a mixed use development where retailers want spaces to encourage customers to stay on-site as long as possible. However, a review of other, successful mixed use developments finds that 20% is too high a threshold; the Town Square has a large, well-

used courtyard, but the courtyard is less than 20% of the overall development. Therefore, as others have suggested, a 10% public uses requirement is more practical.

3. Parking – The draft Zoning Ordinance “prefers” structured parking in the mixed use zones. In true, urbanized environments, such parking is a cost of doing business; however, although Rockville is urbanizing, it has not yet reached the level where 100% structured parking can be supported by the rents. Therefore, more flexibility of site design is required to allow some level of surface parking without additional exactions.

The Zoning Ordinance also encourages the parking to be “hidden” from the right-of-way. Generally speaking, it is possible to “hide” the bulk of the parking (surface or structured) from the roadway; however, retail tenants, in almost every instance, desire some level of visible parking to entice customers. The Planning Commission added a provision to allow limited parking at the street in the MXTD zone and Combined requests the same allowance for the MXCD and MXNC zones.

4. Outdoor Sales Area – Section 25.13.06(b)(3) states that “outdoor sales areas shall be considered part of the gross floor area of the retail establishment.” This is an impractical regulation for which the purpose is unclear. “Outdoor sales area” is not a defined term and there is no instruction on how to measure such areas. Gross Floor Area is a measurement of square footage “in a building” (see the definition of the term), to include outdoor areas would create uncertainty over the space to be measured since no clear demarcation, such as a wall, exists. Moreover, some tenants want outdoor sales space, some do not, some tenants want such space on a seasonal basis, others year-round; therefore the numbers would fluctuate over time based on the tenant and the season. Any outdoor sales space is ancillary to the main indoor space of the tenant and is limited by the surroundings – other tenants, parking areas, etc. – and does not present a “windfall” for any tenant or property owner. If the City is concerned about the aesthetics or the intensity of such outdoor spaces, both can easily be controlled with site specific design guidelines made part of the site plan approval.
5. Development Standards Interaction – There are numerous internal conflicts within the Zoning Ordinance and with other elements of the City’s code. The desire to bring the building to the street to create a strong pedestrian presence is directly in conflict with the public use space requirements which require that the public space be easily accessible from the street. The design standards themselves, while relaxed somewhat by the Planning Commission, still present challenges in implementation and will likely lead to unintended and undesirable results. Master Plan recommendations are a more site-specific and practical way to regulate the relationship of a structure to the street and surrounding community. In the alternative, the standards could be compiled into Design Guidelines per zone or area of the City, as the City has done elsewhere, to guide future architecture and site design. By inserting inflexible standards in the Zoning Ordinance, as opposed to recommendations of a Master Plan or Design Guidelines, the Planning Commission loses the ability to fit each building to its environment (as well as the ability to allow changes to achieve other important objectives, such as LEED rankings or community requests).

6. Multiple Front Yards – College Plaza fronts on three rights-of-way, giving the property three front yards and three individual requirements for front setbacks, height and building design. Therefore, some flexibility in implementation of the various standards is necessary to achieve compatible development along the various streets:

25.13.14 – Waiver of Requirements When a property fronts on more than one right-of-way, the Approving Authority may waive any of the standards and/or requirements of this Article in order to achieve greater compatibility along each of the rights-of-way.

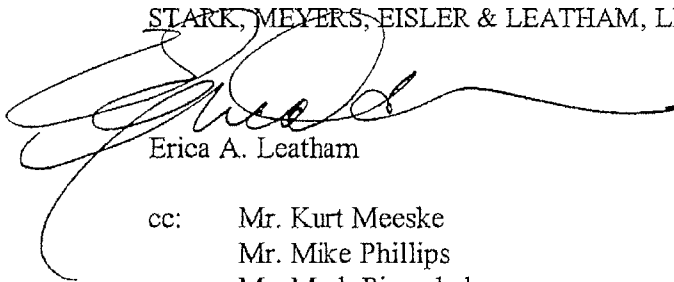
Combined Properties understands and appreciates the City's goal to foster good design in any new project. Such redevelopment serves both the residential and non-residential citizens. However, the City must also appreciate that properties that are currently profitable need an incentive to redevelop. As a matter of economics (particularly in this economy), at some point, it becomes more cost-effective to maintain the status quo via the bare minimum of upkeep and retention of existing tenants (i.e., no interest in upgrading tenants) than to redevelop. The RORZOR Committee and Planning Commission almost certainly did not want such a result. Consequently, we urge the Mayor and Council to seriously consider the impact of the draft Zoning Ordinance on operating business, in both the short and the long term. In the case of College Plaza, the application of the MXCD zone solves many of these issues.

On a final note, Combined Properties has initiated and maintained a dialogue with the College Gardens Citizens Association to manage any existing concerns about the shopping center and guide future redevelopment. The parties have been in communication for several months and, as noted in the testimony from a representative of College Gardens, the parties have developed an amicable relationship and the community withdrew its support for the MXNC zone.

Thank you for your consideration of these comments.

Sincerely,

STARK, MEYERS, EISLER & LEATHAM, LLC



Erica A. Leatham

cc: Mr. Kurt Meeske
Mr. Mike Phillips
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08/04/2008 04:04 PM

To <mayorcouncil@rockvillemd.gov>

cc "Erica Leatham" <ELeatham@meyerseisler.com>

bcc

Subject Comprehensive Review of the City of Rockville Zoning

On behalf of Ms. Erica Leatham, attached is a letter to the Mayor and Council for the Comprehensive Review of the City of Rockville Zoning.

Thank you,

Nikki R. Blubaugh, Certified Paralegal

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